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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

AUDRAE R. JONES,

Plaintiff and Appellant,

v.

COUNTY OF LOS ANGELES,

Defendant and Respondent.

B219850

(Los Angeles County
Super. Ct. No. BC383529)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Joanne O'Donnell, Judge. Affirmed.

Audrae R. Jones, in pro. per., for Plaintiff and Appellant.

Law Offices of Torres & Brenner, Anita Susan Brenner and Leonard E.
Torres, for Defendant and Respondent.

Appellant Audrae R. Jones appeals the judgment arising from the trial court's order dismissing her complaint under Code of Civil Procedure section 581, subdivision (f)(2), for failure to amend after the court sustained the demurrer of respondent County of Los Angeles (County) with leave to amend. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On January 9, 2008, appellant filed a form complaint naming the Los Angeles County Department of Children and Family Services (DCFS) as defendant. Boxes were checked indicating appellant's claim was based on general negligence and intentional tort,¹ but the complaint did not include any specific allegations except that appellant's daughter, Maya Michelle Sandridge, had died while in the custody of DCFS.²

The County demurred to the complaint on grounds of uncertainty, failure to state facts sufficient to support a cause of action and failure to state a statutory basis for liability. Appellant did not file a written opposition, but filed a first amended complaint (FAC) before the demurrer could be heard, causing it to be taken off calendar.

The FAC was substantially the same as the original -- a form complaint with a few boxes checked and minimal factual allegations.³ The County demurred to

¹ The boxes checked stated "[t]he following causes of action are attached," but no form causes of action were attached.

² A copy of the child's death certificate was attached to the complaint, showing that she died on March 18, 2007, at the age of 25 months, of cardiopulmonary arrest caused by chronic respiratory failure, hypertrophic cardiomyopathy and holoprosencephaly (a genetic defect in which the brain's lobes do not sufficiently develop).

³ Appellant had attached a number of new exhibits, including documents that appeared to be her daughter's medical records and autopsy report, a claim appellant
(*Fn. continued on next page.*)

the FAC, again based on grounds of uncertainty, failure to state facts sufficient to support a cause of action and failure to state a statutory basis for liability. At the June 5, 2008 hearing, the court sustained the demurrer, giving appellant 20 days leave to amend.⁴ Within a day, appellant prepared a motion for an extension of time, contending she was seeking to find an attorney or paralegal to assist her. The moving papers, which were completely handwritten and entitled “Ex Parte Motion and Motion for Extension of Time,” had a hearing date of August 4 written on the first page. From the absence of a file stamp, it appears that appellant did not file the motion with the clerk’s office. An attached proof of service indicates that she, instead, mailed the motion to the court on June 6, and also served the County by mail on that date.

A month later, on July 6, appellant filed a form “Application for Extension of Time to File Brief.”⁵ Appellant wrote “08/04/08” in the space intended for the applicant to specify when his or her brief is currently due.⁶ Appellant wrote

submitted to the County for damages based on her daughter’s death, and the County’s denial.

⁴ The court stated in its order that appellant “fail[ed] to state facts sufficient to sustain any cause of action against the County”; “fail[ed] to allege any statutory liability on the part of the County”; and “allege[d] no facts showing a duty of care owed by the County as to any cause of action.” The order further stated: “The documents attached to the form complaint do not cure the pleading defects because it cannot be determined how the documents support the causes of action alleged.”

⁵ The application contains no file stamp, but the date “7/6/08” was written inside the box labeled “for court use only.”

⁶ The form appellant used, APP-006, is intended for use in the Court of Appeal, to be submitted when a party seeks additional time to file an appellate brief. As such matters are not resolved by a formal hearing, the form does not contain a place for a hearing date.

“8/11/08” in the space intended for the applicant to state the requested extension date.

On July 18, the County filed an “Opposition to [Appellants’] Application for Extension of Time to File Brief and/or Ex Parte Motion and Motion for Extension of Time,” arguing that appellant failed to supply a sufficient reason for the extension requested and that, in any event, the time for filing the amended complaint had expired on June 25. In the opposition papers, the County noted that its motion to dismiss for failure to amend was pending and would be heard August 8.

The record indicates a case management conference took place on August 4, and that appellant was present. According to the order, the only matters discussed were the dates for the mediation, the final status conference and the trial. Nothing in the order indicates there was any discussion of the motion for extension of time or that the court was aware that appellant sought additional time to plead.⁷

At the August 8 hearing on the County’s motion to dismiss, the court ordered the matter dismissed, based on appellant’s failure to comply with court orders. The minute order stated: “[The County’s] demurrer was sustained with twenty days’ leave to amend on June 5, 2008. That deadline passed more than one month ago, yet [appellant] has not filed a second amended complaint. Because [appellant] did not file a written opposition, no explanation, reasonable or otherwise, has been provided for this failure.” Following entry of judgment, appellant filed a notice of appeal.

⁷ Appellant did not provide a reporter’s transcript. The burden is on her, as appellant, to provide an adequate record to demonstrate error. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295; *Heather Farms Homeowners Assn. v. Robinson* (1994) 21 Cal.App.4th 1568, 1575.)

DISCUSSION

Under Code of Civil Procedure section 581, subdivision (f)(2), a trial court may, subject to an exception not applicable here, dismiss a complaint when, after a defendant's demurrer to the complaint is sustained with leave to amend, "the plaintiff fails to amend [the complaint] within the time allowed by the court and either party moves for dismissal." This provision "gives the defendant the right to obtain a court order dismissing the action with prejudice once the court sustains a demurrer with leave to amend and the plaintiff has not amended within the time given.'" (*Cano v. Glover* (2006) 143 Cal.App.4th 326, 330, quoting *Parsons v. Umansky* (1994) 28 Cal.App.4th 867, 870.) A trial court's decision to dismiss an action under section 581, subdivision (f)(2) is reviewed for abuse of discretion. (*Leader v. Health Industries of America, Inc.* (2001) 89 Cal.App.4th 603, 612.)

On appeal from a dismissal under Code of Civil Procedure section 581, subdivision (f)(2), the plaintiff may seek review of the correctness of the order sustaining the demurrer, and the appellate court will overturn the dismissal if a cognizable cause of action was stated in the final version of the complaint. (*Chicago Title Ins. Co. v. Great Western Financial Corp.* (1968) 69 Cal.2d 305, 312; *Otworth v. Southern Pac. Transportation Co.* (1985) 166 Cal.App.3d 452, 457.) Here, however, appellant does not seek our review of the FAC to determine whether it stated a cause of action.⁸ She contends, instead, that the court erred in

⁸ Because appellant failed to present argument with citation to appropriate legal authority on this point, any claim that the FAC was adequate is forfeited. (See *Horowitz v. Noble* (1978) 79 Cal.App.3d 120, 138-139; 9 Witkin, Cal. Procedure (4th ed. 1997) Appeal, § 594, pp. 627-629.) Moreover, even were we to address this issue, we would agree with the trial court. A complaint must contain "sufficient particularity and precision to acquaint the defendant with the nature, source and extent of [the] cause of action.'" (*County of Santa Clara v. Superior Court* (2009) 171 Cal.App.4th 119, 126, quoting *Harman v. City and County of San Francisco* (1972) 7 Cal.3d 150, 157.) The only facts that can be gleaned from appellant's FAC are that her daughter, who had

(Fn. continued on next page.)

failing to consider her motion for additional time to amend before granting the County's motion to dismiss and that the matter must be remanded to allow her to file a second amended complaint. We conclude the court did not err.

Throughout this litigation, appellant, a non-lawyer, has represented herself. This entitled her to no special consideration or exemption from the rules of procedure. (See, e.g., *Kobayashi v. Superior Court* (2009) 175 Cal.App.4th 536, 543 ["Pro. per. litigants are held to the same standards as attorneys."]; *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284 [pro. per. litigants "are not entitled to special exemptions from the California Rules of Court or Code of Civil Procedure."]; *Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 985 ["A doctrine generally requiring or permitting exceptional treatment of parties who represent themselves would lead to a quagmire in the trial courts, and would be unfair to the other parties to litigation."].) After the court sustained the County's demurrer to the FAC, appellant apparently desired additional time to prepare an amended complaint. Appellant did not, however, conform to the procedures which all litigants must follow to ensure that a motion is placed before the court for timely resolution. First, a request for extension of time to file a pleading must be heard and resolved prior to the date the pleading is due. (See *Leader v. Health Industries of America, Inc.*, *supra*, 89 Cal.App.4th at pp. 613-614 [where plaintiff failed to file amended complaint in a timely manner, court had discretion to dismiss, even though amended pleading was submitted before motion to dismiss was filed or court's dismissal order entered]; cf. *Iott v. Franklin* (1988) 206 Cal.App.3d 521, 531 [reversing trial court order granting defendant relief from default based on

suffered serious ailments from the time of her birth, died while hospitalized and in the legal custody of DCFS. No facts were stated to support that the County or anyone else was negligent, or otherwise legally culpable, in connection with her death.

excusable neglect where defendant's attorney left message with plaintiff's attorney seeking extension of time to answer but received no response: "'It would be absurd to countenance or encourage' unilateral, self-created extensions of time.'].") With only 20 days between the date of the hearing on the demurrer to the FAC and the date the amended complaint was due, the proper course would have been to appear in court *ex parte* to request the extension.⁹ Appellant included the words "ex parte" in the title of her motion, but did not follow any of the *ex parte* procedures or attempt to have the motion heard on an *ex parte* basis. (See Cal. Rules of Court, rule 3.1207 [party seeking *ex parte* order must personally appear in court]; *id.*, rule 3.1203 [absent exigent circumstances, party seeking *ex parte* order must notify opposing parties one day before appearing in court]; *id.*, rule 3.1201 [ex parte moving papers must include declaration indicating proper notice has been given and a proposed order].) Appellant instead attempted to proceed by way of a noticed motion, setting a hearing date that was more than a month past the date her amended pleading was due to be filed. Accordingly, she placed herself in a position where default of the court's June 5 order was inevitable and dismissal of her complaint subject to the court's discretion, even had her motion been properly presented to the court.

Further, appellant did not file the moving papers with the clerk's office in accordance with the requirements of the rules of procedure. (See, e.g., Civ. Proc. Code, § 1005, subd. (b) ["Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be . . . filed at least 16 court days before the hearing."]; Cal. Rules of Court, rule 3.1302(1) ["Unless otherwise

⁹ "Ex parte" essentially means without full statutory notice to the opposing party. (See Black's Law Dictionary (8th ed. 2004) p. 616, col. 2; Civ. Proc. Code, § 1005, subd. (b).)

provided by local rule, all papers relating to a law and motion proceeding must be filed in the clerk's office.”]; *In re Richard S.* (1991) 54 Cal.3d 857, 863 [Judicial Council rules have the force of statutes so long as they are not inconsistent with legislative enactments or constitutional provisions].) Appellant mailed the motion to the court, where it was eventually placed in the superior court file, but there is no evidence the judge to whom the case was assigned and who ruled on the demurrer and the motion to dismiss was aware of it.¹⁰ Nor does the record indicate that appellant made any attempt to clarify the situation. Appellant did not oppose the County's motion to dismiss. Nothing before us indicates that she informed the court, either at the August 4 case management conference or at the August 8 hearing on the motion to dismiss, that she sought additional time to file an amended pleading. On the contrary, the court's dismissal order recited that appellant had provided “no explanation, reasonable or otherwise” for her failure to file a second amended complaint. In light of appellant's failure to demonstrate the court ignored a properly filed request for an extension or abused its discretion in enforcing the deadline previously imposed, we find no error. In the absence of an approved extension of time to plead, appellant was in default of the court's June 5 order, and the court did not abuse its discretion in dismissing under Code of Civil Procedure section 581, subdivision (f)(2).

¹⁰ The form “Application for Extension of time to File Brief” which appellant apparently filed on July 6 did not cure the defect, as it was the wrong form and contained misleading information and no obvious hearing date.

DISPOSITION

The judgment is affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.